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CORPORATION: ASSESSMENT ON STOCKHOLDERS' LIABILITY: EXTRATERRITORIAL LIABILITY OF STOCKHOLDERS FOR ASSESSMENTS LEVIED ON A JUDGMENT AGAINST THE CORPORATION—In an action on behalf of the judgment creditors against a stockholder to enforce the latter's liability for an assessment levied to pay a judgment against the corporation in the jurisdiction in which the corporation was chartered, the stockholder cannot successfully set up in defense that the proceedings against the corporation were without jurisdiction as against him because he was not a party thereto, or because he had no notice thereof.[1] In *Clarkson v. Moir* this rule was applied.[2] A liquidator of a Canadian bank who had been given authority under a statute by the Supreme Court of Ontario to collect assessments on the stock of the bank, which had there been declared insolvent, maintained an action in California against a stockholder who throughout had resided in California. This decision is new in this state, but accords with the weight of authority. The question naturally arises as to the extent to which this rule will, in the future, be applied. In other jurisdictions it has been held that a judgment against the corporation is conclusive against the stockholder respecting the existence and amount of the indebtedness adjudged;[3] for the jurisdiction of the corporation is considered to be that of the stockholder so far as is necessary for the determination of the rights and liabilities of the corporation and its members among themselves.[4] Nor can the stockholder complain because the law where the case against the corporation was decided is different from the law of the state in which he resides; for, by subscribing to the stock of the foreign corporation, he subjects himself to the laws of the foreign state in respect of the powers and obligations of such corporation.[5]

Matsoukis v. Priestman (1915) 1 K. B. 681; Yrazu v. Astral Shipping Co., (1904) 9 Com. Cas. 100; for application in English courts.

[1] Weitzel v. Brown (1916) 224 Mass. 190, 112 N. E. 879; Howarth v. Ellwanger (1898) 86 Fed. 54; Howarth v. Angle (1900) 162 N. Y. 179, 56 N. E. 489, 47 L. R. A. 725; Hale v. Coffin (1902) 114 Fed. 567, *affirmed* (1903) 120 Fed. 470, 57 C. C. A. 528.

[2] (September 3, 1921) 36 Cal. App. Dec. 1, 201 Pac. 474. See also: Kirtley v. Holmes (1901) 107 Fed. 1, 46 C. C. A. 102; Hale v. Hardon (1899) 95 Fed. 747, 37 C. C. A. 240; Converse v. Ayer (1908) 197 Mass. 443, 84 N. E. 98, L. R. A. 1915B 805.

[3] Coe v. Aronom Fertilizer Works (1915) 237 U. S. 413, 59 L. Ed. 1027, 35 Sup. Ct. Rep. 625.

[4] Elderkin v. Peterson (1894) 8 Wash. 674, 36 Pac. 1089; Hawkins v. Glenn (1889) 131 U. S. 319, 33 L. Ed. 184, 9 Sup. Ct. Rep. 739; Great Western Telegraph Company v. Purdy (1896) 162 U. S. 329, 40 L. Ed. 1015, 16 Sup. Ct. Rep. 837; Glenn v. Liggett (1890) 135 U. S. 533, 34 L. Ed. 262, 10 Sup. Ct. Rep. 867; Marson v. Deither (1892) 49 Minn. 423, 52 N. W. 38.

[5] Howarth v. Lombard (1900) 175 Mass. 570, 56 N. E. 888, 49 L. R. A. 301; Bernheimer v. Converse (1907) 206 U. S. 516, 51 L. Ed. 563, 27 Sup. Ct. Rep. 755; Nashua Savings Bank v. Anglo-American Land etc. Company (1902) 189 U. S. 221, 47 L. Ed. 782, 23 Sup. Ct. Rep. 517, 7 Ann. Cas. 75; Pulsifer v. Green (1902) 96 Me. 438, 52 Atl. 921.

The true basis of this doctrine would seem to be agency,[6] and therefore the principles there applicable should govern in these situations. In taking the stock of a corporation a stockholder appoints the corporation his agent for carrying on the business involved. The terms of the agency are determined by the provisions of the corporate charter, and by the laws of the state of incorporation, all of which the subscriber is presumed to know.[7] His mere subscription to stock confers upon his agent, the corporation, the power to act on all questions in the scope of its authority as such agent—that is, to do any acts within the legitimate exercise of its corporate powers.[8] So, a stockholder cannot sucessfully plead that a decree against the corporation is not binding on him, even though he be a non-resident, and not served with process;[9] for "the corporation must be regarded so far as his agent that he is considered as present by representation for the purpose of the suit."[10]

Accordingly, the only defenses available to the stockholder in such an action are those he could set up in the similar case of the enforcement against a principal of a judgment against his agent. With the exception of such defenses as fraud and collusion, the principal is ordinarily limited to a defense based on the alleged non-existence of the principal-agent relationship.[11] Similarly, the stockholder cannot set up in defense a matter which was determined with regard to the claim against the corporation,[12] the validity of incorporation,[13] nor even a meritorious defense which the corporation had, but failed to introduce.[14] He may, however, set up that he is

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[6] Hawkins v. Glenn (1889) 131 U. S. 319, 33 L. Ed. 184, 9 Sup. Ct. Rep. 739; Selig v. Hamilton (1914) 234 U. S. 652, 58 L. Ed. 1518, 34 Sup. Ct. Rep. 926.

[7] Howarth v. Lombard (1900) 175 Mass. 570, 56 N. E. 888, 49 L. R. A. 301.

[8] Royal Arcanum v. Green (1915) 237 U. S. 531, 59 L. Ed. 1089, 35 Sup. Ct. Rep. 724; Whitman v. National Bank (1900) 176 U. S. 559, 44 L. Ed. 587, 20 Sup. Ct. Rep. 477; Hartford Life Insurance Company v. Ibs (1915) 237 U. S. 662, 59 L. Ed. 1165, 35 Sup. Ct. Rep. 692.

[9] Irvine v. Putnam (1909) 167 Fed. 174; Hamilton v. Simon (1910) 178 Fed. 130.

[10] 14 C. J. 998, n. 98. To the same effect see Converse v. Hamilton (1912) 224 U. S. 243, 56 L. Ed. 749, 32 Sup. Ct. Rep. 457, Ann. Cas. 1913D 1292. See also: Converse v. Ayer (1908) 197 Mass. 443, 84 N. E. 98; Howard v. Glenn (1890) 85 Ga. 238, 11 S. E. 610, 21 Am. St. Rep. 156. *Contra*: Converse v Stewart (1905) 105 App. Div. (N. Y.) 478, 94 N. Y. Supp. 310; Wigton v. Bosler (1900) 102 Fed. 70 (holding that an action will not be upheld to recover the amount of an assessment made upon the shares by the court of another state, it being the domicile of the corporation, in a proceeding to which the stockholder was not a party, to which he did not appear, and to which he could not have been required to appear because of his being beyond the jurisdiction of the court.)

[11] 2 Mechem on Agency, § 2074, and cases there cited.

[12] Champagne Lumber Company v. Jahn (1909) 168 Fed. 510, 93 C. C. A. 532.

[13] Weitzel v. Brown (1916) 224 Mass. 190, 112 N. E. 879, 3 A. L. R. 102.

[14] Clarke v. Marks (1913) 111 Me. 218, 88 Atl. 718. This case held that where a corporation failed to introduce a defense in an action against the corporation, a judgment against it is, nevertheless, binding against stockholders.

not a stockholder in the corporation; that there was fraud or collusion between the plaintiff and the corporation; and that the judgment against the corporation was invalid because of fraud, want of jurisdiction, or any other reason that would serve as good grounds for setting aside the judgment in equity.[15]

Clarkson v. Moir[16] furnishes little guide as to the future solution of these problems in this state. It contains, however, a dictum to the effect that the stockholder's only defenses are: that he is not a stockholder as alleged, that he has a valid right to set-off against the corporation, or that he has some other personal defense. Although there is nothing in the opinion of the court to indicate that in a proper case the usual defenses in cases of res judicata, such as collusion, fraud, want of jurisdiction, etc., would be allowed, this may probably be assumed.

MASTER AND SERVANT: LIABILITY OF EMPLOYER FOR NEGLIGENCE OF EMPLOYED PHYSICIAN IN TREATMENT OF INJURED EMPLOYEE—A corporation with a large number of employees retained physicians and maintained a hospital service for the treatment of such of its employees as might be in need thereof. In order to provide for the necessary expense, regular fixed deductions were made from the employees' pay, the fund so accruing being administered by the employing corporation as a part of its own moneys. An employee, injured while at his work, was negligently treated by one of the company's physicians, and died as a result. Should the employer be liable in damages for the negligence of the doctor?

Although a considerable number of large corporations, operating in California, maintain hospital organizations financed in this manner, this question had never reached final decision in the appellate courts of this state until the case of *Bowman v. Southern Pacific Company*.[1] It has, however, been the subject of comment and decision in many other jurisdictions, and varying shades of opinion are presented.

On their facts, cases under the general heading may be said to fall into three classes.[2] In the first class are those corporations which maintain a hospital service for their employees supported entirely out of the employers' treasuries. Authorities[3] are in sub-

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[15] 3 Clarke & Marshall on Private Corporations, § 824. Northern Pacific Railway Company v. Crowell (1917) 245 Fed. 668; Ball v. Warrington (1901) 108 Fed. 472, 47 C. C. A. 447; Butcher v. J. I. Case Threshing Machine Company (1918) 207 S. W. (Texas) 980; Montgomery v. Whitehead (1907) 40 Colo. 320, 90 Pac. 509, 11 L. R. A. (N. S.) 230; Swing v. Taylor & Crate (1911) 68 W. Va. 621, 70 S. E. 373; Town of Hinckley v. Kettle River Railroad Company (1900) 80 Minn. 32, 82 N. W. 1088; Robinson v. Phegley (1917) 84 Or. 124, 163 Pac. 1166; Champagne Lumber Co. v. Jahn (1909) 168 Fed. 510, 93 C. C. A. 532.

[16] Supra, n. 2.

[1] (Dec. 22, 1921) 36 Cal. App. Dec. 1058, 204 Pac. 403.

[2] 1 Bailey on Personal Injuries, 932, and cases cited; 5 Labatt's Master and Servant, 6214 ff.; 18 R. C. L. 604.

[3] Arkansas Midland R. Co. v. Pearson (1911) 98 Ark. 399, 135 S. W. 917, 34 L. R. A. (N. S.) 317; Barden v. Atlantic Coast Line R. Co. (1910)